

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DENNIS BALSLEY,

Plaintiff,

vs.

BNSF RAILWAY COMPANY,  
a Delaware corporation,

Defendant.

Case No. 09-05168 RJB

JOINT  
PRETRIAL ORDER

**JURISDICTION**

This is a civil action arising under the Federal Employers' Liability Act, 45 U.S.C. § 51 *et. seq.*. Jurisdiction is vested in this court by virtue of 28 U.S.C. § 1331.

**CLAIMS AND DEFENSES**

The Plaintiff will pursue at trial the following claims:

1. Violation of 45 U.S.C. § 51 *et. seq.*

Defendant asserts the following affirmative defenses:

1. Defendant provided Plaintiff with a reasonably safe place to work, as required by the Federal Employers Liability Act (FELA).
2. Plaintiff's claims are precluded by the Federal Railroad Safety Act (FRSA) and Interstate Commerce Commission Termination Act (ICCTA).



**Plaintiff contends as follows:**

1. That Plaintiff's injuries to his left ankle and lumbar spine are the result of Defendant's failure to provide him with a safe place to work in violation of 45 U.S.C. § 51 *et seq.*

2. That Defendant was negligent in that: (a) it required Plaintiff to disembark his locomotive on main line ballast; and (b) it failed to instruct Plaintiff to disembark at other safer nearby locations.

3. Plaintiff claims that he sustained severe and permanent injuries to his left ankle and the bones, muscles, tissues, nerves, ligaments and internal parts thereof.

4. Plaintiff claims that his ankle injury lead him to fall and injure his low back, and that this fall resulted in an injury to his lumbar spine and a consequent lumbar fusion surgery.

5. Plaintiff claims that as a result of the injuries to his ankle, he has been permanently disabled from returning to work for the railroad, and that he has lost and will suffer a loss of wages and benefits.

6. Plaintiff claims that he suffered permanent impairment of his earning capacity as a result of the injuries to his left ankle.

7. Plaintiff claims he has suffered sustained significant pain, emotional distress and loss of enjoyment of life as a result of the injuries to his ankle and back, and that following his recovery from his back surgery, that he has continued to suffer the same due to the injury to his ankle, and will sustain such damage into the future on a permanent basis.

8. Plaintiff was not contributorily negligent in causing his injury.

9. Plaintiff did not fail to mitigate his damages.

**The Defendant contends as follows:**

1. Defendant BNSF was not negligent because: (a) BNSF provided a reasonably safe place to work; (b) using mainline ballast, and stepping off locomotives and other railroad vehicles onto it, are necessary to railroad operations; (c) BNSF trains its employees on the proper method of disembarking locomotives onto mainline ballast; (d) Plaintiff had stepped off

1 locomotives onto mainline ballast safely and without injury for 27 years; (e) the ballast where  
2 Plaintiff twisted his ankle conformed to federal regulations, was properly maintained, and was  
3 defect-free; and (f) each of the other crew members stepped off the locomotive at the same place  
4 on the mainline ballast safely.

5 2. With regard to Plaintiff's claim for damages, Defendant contends that Plaintiff  
6 cannot recover any damages because BNSF was not negligent.

7 3. Defendant further contends that: (a) the accident did not cause all of Plaintiff's  
8 subsequent medical issues claimed; (b) Plaintiff did not mitigate his damages as required by law;  
9 (c) Plaintiff may not recover lost wages for any months that he received Railroad Retirement  
10 Board Occupational Disability Annuity payments; and (d) Plaintiff's calculation of future wage  
11 loss is improper.

## 12 ISSUES OF LAW

13 **The following are the issues of law which the parties agree are to be determined by**  
14 **the court:**

- 15 1. Motions in Limine as presented by the parties.
- 16 2. The jury instructions submitted by the parties.
- 17 3. The verdict form.

18 **Plaintiff's statement of issues of law to be determined by the court:**

- 19 1. None.

20 **Defendant's statement of issues of law to be determined by the court:**

- 21 1. Issues of law that are contained in Defendant's trial brief.

## 22 EXPERT WITNESSES

23 (a) Each party shall be limited to one expert witness for each issue pursuant to court  
24 rules.

25 (b) The names and addresses of the expert witnesses to be used by each party at the  
26 trial and the issue upon which each will testify are:

**(1) On behalf of Plaintiff;**

(A) Ray Duffany  
6221 Linday Court  
W. Bloomfield, MI, 48324

Mr. Duffany will testify consistent with his deposition, July 24, 2010 report.

(B) Jeffery B. Opp.  
7600 E. Arapahoe Rd., Ste. 100  
Centennial, CO, 80112

Mr. Opp will testify consistent with his deposition, July 22, 2010 report.

(C) Merril Cohen  
15 S. Grady Way, Suite 410  
Renton, WA 98057

Ms. Cohen will testify consistent with her deposition, June 29, 2010 report and any amendments to that report, subject to any objection by Defendant.

**(2) On behalf of Defendant:**

(A) Eugene Toomey, M.D.  
c/o Machaon Medical Evaluations  
801 Broadway, Suite 922  
Seattle, WA 98122  
(206) 323-1999

Dr. Toomey will testify via videotaped perpetuation deposition taken January 12, 2011 as designated by the parties.

(B) Lawrence Murphy, M.D.  
c/o Machaon Medical Evaluations  
801 Broadway, Suite 922  
Seattle, WA 98122  
(206) 323-1999

Dr. Murphy will testify consistent with the issues addressed in his report or deposition in this case.

(C) Stan Owings  
Owings and Associates, Inc.  
11422 Des Moines Memorial Drive,  
Seattle, WA 98168

Mr. Owings will testify consistent with the issues addressed in his report or deposition in this case.

(D) Dr. David Knowles  
3302 Fuhrman Ave E., Suite 111  
Seattle, WA 98102

Dr. Knowles will testify consistent with the issues addressed in his report or deposition in this case.

(E) William Paxton, P.E.  
P.O. Box 109  
Ebony, VA 23845

Mr. Paxton will testify consistent with the issues addressed in his report or deposition in this case.

(F) Brian Heikkila  
Full Service Railroad Consulting  
1622 River Road W.  
P.O. Box 489  
Plains, MT 59859

Mr. Heikkila will testify consistent with the issues addressed in his report or deposition in this case.

(G) Any expert listed by Plaintiff

#### **OTHER WITNESSES**

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

##### **(a) On behalf of Plaintiff:**

1. Robert E. Carlson, M.D.  
122 3<sup>rd</sup> St. NE, Auburn  
WA 98002.

Dr. Carlson will testify via videotaped perpetuation deposition. He will offer testimony as Plaintiff's primary treating physician, and will testify as to the nature and extent of Plaintiff's ankle and back injuries, his diagnosis, care, treatment, and prognosis. It is anticipated that Dr. Carlson will causally relate his diagnosis and the need for treatment and surgery, and Plaintiff's consequent disability, to Plaintiff's April 8, 2006 on the job injury, subject to objection by Defendant.

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- 1                   2.       Eugene Hister - will testify.  
2                             4803 244<sup>th</sup> Street Court  
3                             East Graham, WA 98338.

4                   Will testify to the circumstances of Plaintiff's injury as well as his experience with  
5                   mainline ballast and crew changes, and to his intention to work past the age of 61.

6                   **Defendant objects to new subjects of testimony that were not previously disclosed.**

- 7                   3.       Pete Etzold - will testify.  
8                             1511 1/2 NW 62nd Street  
9                             Seattle, WA 98107.

10                  Will testify to the circumstances of Plaintiff's injury as well as his experience with  
11                  mainline ballast and crew changes.

- 12                  4.       Gary Larsen - will testify.  
13                             2688 Elm Drive  
14                             Brier, WA 98036.

15                  Mr. Larsen is a BNSF engineer, familiar with crew change procedures and conditions in  
16                  the area in which Plaintiff was injured and in which he ordinarily changes crews, as well as to  
17                  the hazards posed by mainline ballast.

18                  **Defendant objects to new subjects of testimony that were not previously disclosed,**  
19                  **as well as any issues that require expert testimony.**

- 20                  5.       Thomas Frederick - will testify.  
21                             20422 SE 286<sup>th</sup> St.  
22                             Covington, WA 98042.

23                  Mr. Frederick is a Union Pacific engineer, familiar with crew change procedures and  
24                  conditions in the area in which Plaintiff was injured and in which he ordinarily changes crews.

- 25                  6.       Dennis Balsley - will testify.  
26                             17711 Rhodes Lake Rd. East  
27                             Bonney Lake, WA, 98391.

28                  Mr. Balsley is the Plaintiff and has knowledge of the circumstances surrounding his  
injury, BNSF crew change practices, ballast and his damages.

7.       Jane Balsley - will testify.  
                           17711 Rhodes Lake Rd. East  
                           Bonney Lake, WA, 98391.

                  Mrs. Balsley is Plaintiff's wife and will testify about Plaintiff's pre-injury conditions,

1 his relationship with his job, his retirement plans and the effect of her husband's injuries on his  
2 life.

- 3 8. Dennis Balsley Jr. - possible witness only.  
4 17711 Rhodes Lake Rd. East  
Bonney Lake, WA, 98391.

5 Dennis Balsley Jr. is Plaintiff's son and will testify about Plaintiff's pre-injury  
6 conditions, his relationship with his job, his retirement plans and the effect of his father's  
7 injuries on his life.

- 8 9. Deana R. Whitesel - possible witness only.  
9 9717 Pacific Ave. #17  
Tacoma, WA 98444.

10 Ms. Whitesel is Plaintiff's daughter and will testify about Plaintiff's pre-injury  
11 conditions, his relationship with his job, his retirement plans and the effect of her father's  
12 injuries on his life.

- 13 10. Michael Kesten - possible witness only.  
14 10430 S.W. 43<sup>rd</sup> St.  
Portland, OR 97219.

15 Mr. Kesten participated in the inspection of Rocky Point, Longview Junction and the  
16 Kelso Depot and took photographs. He will testify to the authenticity of the photographs if  
17 necessary.

- 18 11. Plaintiff may call any fact witness listed by Defendant.

- 19 12. Mr. Kevin Wilde  
20 BNSF Director of Safety Reporting and Analysis  
c/o Montgomery Scarp MacDougall  
21 1218 Third Avenue, Suite 2700  
Seattle, WA 98101

22 Portions of Mr. Wilde's deposition will be read into the record subject to objection(s) by  
23 defendant.

24 **(b) On behalf of Defendant:**

- 25 1. Anthony Boldra  
26 BNSF, Terminal Manager  
c/o Montgomery Scarp MacDougall  
27 1218 Third Avenue, Suite 2700  
Seattle, WA 98101

1 Mr. Boldra was the Terminal Manager for Tacoma at the time Plaintiff reported his  
2 alleged injuries. He is a possible witness only and if called would testify with regard to the  
3 facts and circumstances surrounding the same as well as any matters covered in his deposition.

4 2. Ivan Hartsoch  
5 Longview Switching Company, Operations Manager  
6 c/o Montgomery Scarp MacDougall  
7 1218 Third Avenue, Suite 2700  
8 Seattle, WA 98101

9 Mr. Hartsoch is a possible witness only. Mr. Hartsoch participated in a post-incident  
10 inspection of the incident location and if called would testify regarding the facts and  
11 circumstances of the same, and as well as any matters covered in his deposition.

12 3. Scott Unick  
13 BNSF, Assistant Corridor Superintendent  
14 c/o Montgomery Scarp MacDougall  
15 1218 Third Avenue, Suite 2700  
16 Seattle, WA 98101

17 Mr. Unick is expected to testify regarding dispatch practices, railroad operations, crew  
18 change locations, and why Plaintiff's crew was instructed to stop at Rocky Point, and as well as  
19 any matters covered in his deposition.

20 4. Jeffrey Wright  
21 BNSF, Supervisor of Engineering Support  
22 c/o Montgomery Scarp MacDougall, PLLC  
23 1218 3<sup>rd</sup> Avenue, Suite 2700  
24 Seattle, WA 98101  
25 (206) 625-1801

26 Mr. Wright was the General Manager of Longview Switching on the date of Plaintiff's  
27 incident. Mr. Wright participated in a post-incident inspection of the incident location and is a  
28 possible witness only who if called would testify regarding the facts and circumstances of the  
same, and as well as any matters covered in his deposition.

5. Casey Wright  
BNSF, Supervisor of Engineering Support  
c/o Montgomery Scarp MacDougall, PLLC  
1218 3<sup>rd</sup> Avenue, Suite 2700  
Seattle, WA 98101  
(206) 625-1801

Mr. Wright was a BNSF Roadmaster whose territory included Rocky Point at the time of the time of the alleged incident and is expected to testify regarding the facts and circumstances surrounding the same. Mr. Wright is also expected to testify regarding track/ballast maintenance and inspection, both generally and at or near Rocky Point, and as well as any matters covered in his deposition.

6. Steve Matzdorf  
BNSF Terminal Manager (Vancouver, WA)  
c/o Montgomery Scarp MacDougall, PLLC  
1218 Third Avenue  
Seattle, WA 98101  
(206) 625-1801

Mr. Matzdorf is familiar with the BNSF territory including Rocky Point, Washington. He is expected to testify relating to safety and operations issues, including crew change locations, as well as the video reenactment that was performed after Plaintiff's incident, and as well as any matters covered in his deposition.

7. Eugene Aster  
c/o Montgomery Scarp MacDougall  
1218 3<sup>rd</sup> Avenue, Suite 2700  
Seattle, WA 98101  
(206) 625-1801

Mr. Aster is expected to testify regarding BNSF's track inspection policies and rules, including FRA track inspection requirements and/or disembarking a vehicle onto mainline ballast, and as well as any matters covered in his deposition.

8. Joel Howard  
BNSF Assistant Director Maintenance Production Ballast  
c/o Montgomery Scarp MacDougall, PLLC  
1218 Third Avenue  
Seattle, WA 98101  
(206) 625-1801

Mr. Howard is expected to testify about mainline ballast procurement, sizing, sourcing, distribution, purpose, and/or history, and as well as any matters covered in his deposition.

9. Ashley Stevens  
BNSF Medical Department, NW Division  
c/o Montgomery Scarp MacDougall, PLLC

1218 3<sup>rd</sup> Avenue, Suite 2700  
Seattle, WA 98101  
(206) 625-1801

Ashley Stevens is expected to testify regarding medical return to work and vocational rehabilitation issues both generally and in reference to plaintiff's claims, and as well as any matters covered in her deposition.

10. Joan Costa  
BNSF Medical Department, NW Division  
c/o Montgomery Scarp MacDougall, PLLC  
1218 3<sup>rd</sup> Avenue, Suite 2700  
Seattle, WA 98101  
(206) 625-1801

Ms. Costa is a possible witness and may testify regarding medical return to work issues, vocational rehabilitation, and as well as any matters covered in her deposition.

11. Kris Osmus  
BNSF Claims Representative  
c/o Montgomery Scarp MacDougall, PLLC  
1218 3<sup>rd</sup> Avenue, Suite 2700  
Seattle, WA 98101  
(206) 625-1801

Ms. Osmus interviewed plaintiff, inspected the site of the incident, and took photographs. She is expected to testify, if necessary, regarding same and to authenticate the photographs and the transcript/audio recording of her interview with plaintiff.

12. Danny Thomassen  
Retired BNSF Claims Representative  
c/o Montgomery Scarp MacDougall, PLLC  
1218 3<sup>rd</sup> Avenue, Suite 2700  
Seattle, WA 98101  
(206) 625-1801

Mr. Thomassen assisted plaintiff with his post-incident recovery, including providing plaintiff with an exercise bike, microwave, mini-fridge, and rental car. Mr. Thomassen is a possible witness only, and will be called if necessary to authenticate documents relating to the same, including Exhibit A-22.

13. Michael Kesten  
10430 S.W. 43<sup>rd</sup> St.  
Portland, OR 97219

Mr. Kesten participated in the inspection of Rocky Point, Longview Junction and the Kelso Depot and took photographs. He is a possible witness only.

14. Rocky Point Market employee/owner (female, name presently unknown).  
2000 N Pacific Ave  
Kelso, WA 98626-4009

This witness a possible witness only who testify about lighting at the Rocky Point Market.

15. Witness(es), as may be required, for impeachment testimony relating to Plaintiff's receipt of Railroad Retirement Board disability annuity payments.

16. Any witnesses listed by Plaintiff.

17. Any other witness(es) needed to authenticate documents.

### EXHIBITS

#### Plaintiff's Exhibits:

Exhibit No.	Description	Admissibility Stipulated	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
1.	Photo of ballast, coffee cup, tracks and train at Rocky Point - Img. 3523			X
2.	Photo of BNSF locomotive 2876 at Rocky Point - Img. 3530			X
3.	Photo of ballast, coffee cup, tracks and train at Rocky Point - Img. 3546.			X
4.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3572.			X
5.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3573.			X
6.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3574.			X
7.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3575.			X

8.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3576.			X
9.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3577.			X
10.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3578.			X
11.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3579.			X
12.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3580.			X
13.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3581.			X
14.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3582.			X
15.	Photo of gas station taken from tracks at Rocky Point - Img. 3613.		X	
16.	Photo of ballast and tracks at Rocky Point - Img. 3651.			X
17.	Photo of ballast and tracks at Rocky Point - Img. 3652.			X
18.	Photo of ballast, track and concrete pad at Kelso Depot - Img. 3698.		X	
19.	Photo of ballast, track and concrete pad at Kelso Depot - Img. 3710.		X	
20.	Photo of ballast, track and concrete pad at Kelso Depot - Img. 3711.		X	
21.	Photo of ballast, track, loading pad and building at Kelso Depot - Img. 3719.		X	
22.	Photo of train arriving at Kelso Depot - Img. 3740.		X	
23.	Photo of ballast, tracks and locomotive at Longview Junction - Img 3751.			X
24.	Photo of ballast and tracks at			X

	Longview Junction - Img. 3754.			
25.	Photo of ballast, foot and train at Longview Junction - Img. 3763.			X
26.	Photo of ballast, track, switch and locomotive at Longview Junction - Img. 3822.			X
27.	Photo of ballast, track and trains at Longview Junction - Img. 3827.			X
28.	Photo of ballast, tracks, train and light poles at Longview Junction - Img. 3876.			X
29.	Photo of ballast, tracks, train and light poles at Longview Junction - Img. 3878.			X
30.	Aerial photograph - Img. 1001.			X
31.	Aerial photograph - Img. 1020.			X
32.	Aerial photograph - Img. 1023.			X
33.	Aerial photograph - Img. 1042.			X
34.	Aerial photograph - Img. 1056.			X
35.	Aerial photograph - Img. 1116.			X
36.	Post surgical photograph of Plaintiff's 1 <sup>st</sup> surgery on his left ankle. (Img. # P8053123)		X	
37.	Post surgical photograph of Plaintiff's 1 <sup>st</sup> surgery on his left ankle. (Img.#P8063135)		X	
38.	Post surgical photograph of Plaintiff's 1 <sup>st</sup> surgery on his left ankle. (Img.#P8063137)		X	
39.	Post surgical photograph of Plaintiff's 2 <sup>nd</sup> surgery on his left ankle. (Img.#P1130090).		X	
40.	Post surgical photograph of Plaintiff's 2 <sup>nd</sup> surgery on his left ankle.(Img.#P1130091).		X	

41.	Post surgical photograph of Plaintiff's 2 <sup>nd</sup> surgery on his left ankle.(Img.#P1130092).		X	
42.	Post surgical photograph of Plaintiff's 2 <sup>nd</sup> surgery on his left ankle.(Img.#P2180112).		X	
43.	Photo of Plaintiff's cabin - Cabin photo 1.	X		
44.	Photo of Plaintiff's cabin - Cabin photo 2.	X		
45.	Photo of Plaintiff operating a wood splitter - Log splitter photo.	X		
46.	Medical illustration of left ankle surgeries.			X
47.	Medical illustration of spine re-fusion.			X
48.	Plaintiff's work history (BNSF Bates#000183-000196).		X	
49.	2005 BNSF Engineering Instructions.		X	
50.	Plaintiff's Medical Mgt. file (BNSF Bates# 000666-00789).		X	
51.	BNSF Train Dispatcher's Operator's and Control Operator's Manual (BNSF Bates#000947-001028).		X	
52.	BNSF System Special Instructions (BNSF Bates#001029-001084).		X	
53.	Train Dispatcher Notices (BNSF Bates# 001085-001099).		X	
54.	BNSF TY&E Safety Rules (BNSF Bates#001100-001143).		X	
55.	Dispatcher recording (audio).		X	
56.	Inspection reports (BNSF Bates #000222- 000281).		X	
57.	Plaintiff's BNSF Personal Injury Report (BNSF Bates#000397-000400).		X	

58.	BNSF Supervisors Report (BNSF Bates#000401-000419).		X	
59.	BNSF Track Inspection Field Manual (BNSF Bates#000461-000588).		X	
60.	Injury reports involving ballast (NW Division - BNSF Bates#001144-001557)		X	
61.	Reserved			
62.	Reserved			
63.	Train Activity Report/Safety Checklist (BNSF Bates#000201).	X		
64.	Reserved			
65.	Hand drawn diagram (BNSF Bates# 000203).	X		
66.	Reserved			
67.	Reserved			
68.	Peter Etzold hand written statement (BNSF Bates# 000206).	X		
69.	Reserved			
70.	Reserved			
71.	Reserved			
72.	"Walking on Ballast" video.		X	
73.	"Walking on Ballast" video transcript.			X
74.	Deposition transcript of Jeff Wright.		X	
75.	Reserved			
76.	Deposition transcript of Philip Aster.		X	
77.	Deposition transcript of Ashley Stevens.		X	
78.	Deposition transcript of Ivan Hartsoch.		X	
79.	Deposition transcript of Joel Howard.		X	
80.	Reserved			

81.	Reserved			
82.	Deposition transcript of Eugene Toomey.		X	
83.	Report of Eugene Toomey dated May 1, 2010	X		
84.	Deposition transcript of William Paxton			
85.	Report of William Paxton dated July 27, 2010		X	
86.	Deposition transcript of Scott Unick.		X	
87.	Deposition transcript of Steve Matzdorf.		X	
88.	Reserved			
89.	Deposition transcript of Joan Costa		X	
90.	Deposition transcript of Brian Heikkila.		X	
91.	Report from Brian Heikkila dated August 19, 2010.	X		
92.	Report from David Knowles dated August 20, 2010.	X		
93.	Deposition transcript of Stan Owings.		X	
94.	Report from Stan Owings dated July 23, 2010.	X		
95.	Misc. job applications.			X
96.	SAP E-Recruiting Job Posting - Transportation Management Trainee.			X
97.	SAP E-Recruiting Job Posting - Mechanical Management Trainee.			X
98.	Switchman's lantern			X
99.	Reserved			
100.	Deposition transcript of Kevin Wilde		X	

101.	Reserved			
102.	Reserved			
103.	Exhibit 3 of Kevin Wilde's deposition - BNSF injury reports		X	
104.	Exhibit 4 of Kevin Wilde's deposition - BNSF injury reports		X	
105.	Anatomical Ankle model	X		
106.	Jeffery Opp Reports		X	
107.	NW Division Timetable (BNSF bates 000284-000367)	X		
108.	Rocky Point, WA Track Chart (BNSF bates 000283)	X		
109.	Misc. docs from Plaintiff's personal file (BNSF bates 00041, 00043-51)	X (Bates 00047-51)	X (Bates 00041, 00043-46)	
110.	Misc. docs from Plaintiff's personal file (BNSF bates 000589-000609)	X		
111.	Reserved			
112.	Reserved			
113.	Reserved			
114.	Reserved			
115.	Reserved			
116.	Good Samaritan Hospital Records, 10/19/10 through 08/22/89	X		
117.	Enumclaw Medical Center Records – Dr. Clark, 09/24/09 through 06/09/88	X		
118.	Sound Family Medicine Records, 01/12/11	X		
119.	Outpatient Physical Therapy, 07/09/07 through 09/28/06	X		
120.	Cascade Orthopedics – Dr. Carlson, 11/04/10 through 05/30/06	X		

121.	Puget Sound Specialty – Dr. Bishop, 09/13/04 through 1/26/04	X		
122.	Cascade Orthopedics – Dr. Smith, 07/30/08 through 03/19/08	X		
123.	Auburn Diagnostic Imaging Services, 03/04/08 through 05/31/06	X		
124.	Auburn Regional Medical Center, 04/23/08 through 04/06/07 02/26/07 (Cascade Surgery)	X		
125.	St. Joseph Medical Center, 04/09/06 through 11/30/03	X		
126.	Reserved			
127.	Reserved			
128.	Reserved			

**Defendant's Exhibits:**

Exhibit No.	Description	Admissibility Stipulated	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
A-1	05/01/10 report, Dr. Eugene Toomey	X		
A-2	CV, Eugene Toomey		X	
A-3	05/02/10 report, Dr. Lawrence Murphy			X
A-4	CV, Dr. Lawrence Murphy			X
A-5	08/20/10 report, Dr. David Knowles			X
A-6	CV, Dr. David Knowles		X	
A-7	07/23/10 report, Stan Owings			X

A-8	CV, Stan Owings		X	
A-9	08/19/10 report, Brian Heikkila		X	
A-10	CV, Brian Heikkila		X	
A-11	7/27/10 report, William Paxton		X	
A-12	CV, William Paxton		X	
A-13	Railroad work activity photos (BNSF 000947- 000953)			X
A-14	OPUS notes (BNSF 000670 - 000678)		X	
A-15	4/15/10 letter from Paul Bovarnick to Bradley Scarp.		X	
A-16	5/27/10 letter from Paul Bovarnick to Bradley Scarp (BNSF 000790)		X	
A-17	6/4/10 letter from Ashley Stevens to Paul Bovarnick (BNSF 000789)		X	
A-18	5/7/10 letter from Ashley Stevens to Plaintiff (BNSF 000788)		X	
A-19	7/10/09 letter from Ashley Stevens to Plaintiff (BNSF 000787)		X	
A-20	4/11/06 inspection report (BNSF 000221)		X	
A-21	4/24/07 email to Danny Thomassen from Plaintiff (BNSF 000141)		X	
A-22	Busy Body Home Fitness Exercise Bike information (BNSF 000142)			X
A-23	Statement of Eugene Hister. (BNSF 000207)		X	
A-24	Medical Records (Exhibit 7 to		X	

	Balsley deposition)			
A-25	Employee Injury/Occupational Illness Report (BNSF 00001)		X	
A-26	BNSF Employee Transcript (BNSF 00002 - 00004)		X	
A-27	Reimbursement Payments (BNSF 00026 - 00036)		X	
A-28	2006 Release and settlement agreement (BNSF 000946)		X	
A-29	Track Inspection Field Manual (BNSF 000461 - 000588)		X	
A-30	Site inspection photos (BNSF 001144 - 001148, 001196 - 001203)			X
A-31	FRA track inspection records (BNSF 000255 - 000281)		X	
A-32	BNSF Monthly Track Inspection Records (BNSF 000222 - 000254)		X	
A-33	Plaintiff's photo of gas station taken from tracks at Rocky Point - Img. 3612.			X
A-34	Typed statement of Kris Osmus (BNSF 000202)			X
A-35	Reserved			
A-36	Plaintiff's responses to BNSF's 1 <sup>st</sup> and 2 <sup>nd</sup> Requests for Admission.		X	
A-37	Typed statement of Jeffrey Wright (BNSF 000198)			X
A-38	Typed statement of Jeffrey Cox (BNSF 000209)			X
A-39	Handwritten statement of Anthony Boldra (BNSF 000208)			X
A-40	Reenactment video.			X

A-41	Balsley Employee Monthly Earnings History (BNSF 00007)		X	
A-42	Skoog Worklife Expectancies of Railroad Workers Based on the Twenty-Third Actuarial Valuation.			X
A-43	Incident Team Review (BNSF 000199)			X
A-44	4/12/06 Recorded Statement of Dennis Balsley (Audio)		X	
A-45	4/12/06 Recorded Statement of Dennis Balsley (Transcript)		X	
A-46	System Special Instruction Item 8. (BNSF 001029- 001084)		X	
A-47	BNSF Railway Class I Railroad Annual Report to the Surface Transportation Board for the year ending December 31, 2006		X	
A-48	Air Brake & Train Handling Rules 100, 102.		X	
A-49	Rocky Point track chart. (BNSF 000210 - 000211)		X	
A-50	Cascade Orthopedics medical records (Exhibits 1 and 2 to Robert Carlson, MD deposition; June 18, 2008 and July 30, 2008 notes from Terry Smith, MD)		X	
A-51	Plaintiff's cabin/property photos. (BNSF 001204 - 001210)			X
A-52	TYE Safety Rule S-1.5.3. (BNSF 001100 - 001143)		X	
A-53	3/3/08 RRB Vocational Report (5 pages, produced in Plaintiff's responses to BNSF's 1 <sup>st</sup> Request for Production No. 2)		X	
A-54	3/3/08 RRB Application for Determination of Employee's Disability (10 pages, produced in		X	

	Plaintiff's response to BNSF's 1 <sup>st</sup> Requests for Production No. 2)			
A-55	11/6/08 Complete Internal Medicine Evaluation by Rex Alvord, MD (7 pages, produced in Plaintiff's responses to BNSF's 1 <sup>st</sup> Request for Production No. 2)			X
A-56	Expert reports referenced in Plaintiff's pretrial statement.			X
A-57	Cohen test materials and results produced by Plaintiff		X	
A-58	Northwest Timetable. (BNSF 000284 - 000367)		X	
A-59	GCOR 1.1.2, 6.29, 6.19, 6.32, 6.23. (BNSF 001178 - 001186)		X	
A- 60	Balsley handwritten statement/Jeffery Cox statement (BNSF 00008).		X	
A-61	BNSF post-incident site inspection photographs (BNSF 00214, 001216)			X
A-62	BNSF post-incident site inspection photographs produced in BNSF's 4 <sup>th</sup> Supplemental Responses to plaintiff's first requests for production (BNSF 001211 - 001215)			X
A-63	General Track Bulletin (BNSF 000368-000382)		X	
A-64	Hand drawn diagram (BNSF Bates# 000204).			X
A-65	Hand written statement (BNSF Bates #000205).			X
A-66	Deposition transcript of Lawrence Murphy.		X	
A-67	Reserved			

A-68	Reserved			
A-69	Reserved			
A-70	Reserved			
A-71	Reserved			
A-72	Reserved			
A-73	Reserved			
A-74	Reserved			
A-75	Reserved			

### ACTION BY THE COURT

Plaintiff's proposed Actions:

(a) This case is scheduled for trial before a jury on January 24, 2011, at 9:00 a.m..

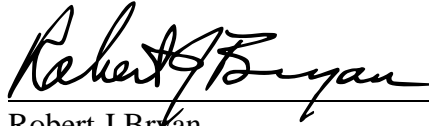
(b) Trial briefs shall be submitted to the court on or before November 22, 2010.

(c) Jury Instructions requested by either party shall be submitted to the court on or before December 10, 2010. Suggested questions of either party to be asked of the jury by the court on voir dire shall be submitted to the court on or before December 10, 2010.

(d) Other court rulings.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest justice.

1 DATED the 20th day of January, 2011.

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4 Robert J Bryan  
5 United States District Judge  
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7 FORM APPROVED and SUBMITTED on January 20, 2011  
8

9 s/ Paul S. Bovarnick  
10 Paul Bovarnick, WSBA #32706  
11 Attorney for Plaintiff

12 s/ Bradley Scarp  
13 Bradley Scarp, WSBA #21453  
14 Attorney for Defendant  
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